



## REDEVELOPMENT AGENCY AGENDA REPORT

ITEM NO. IV. 1, V. 1-2

MEETING DATE:  
9.20.11

**SUBJECT:** CITY AND AGENCY ACTIONS UNDER 2011 REDEVELOPMENT  
LEGISLATION: OPT-IN ORDINANCE, INITIAL RECOGNIZED  
OBLIGATION PAYMENT SCHEDULE, AND AGREEMENT TO  
TRANSFER TAX INCREMENT

**DATE :** SEPTEMBER 14, 2011

**FROM:** THOMAS R. HATCH, CEO AND AGENCY EXECUTIVE DIRECTOR

**CONTACT:** HILDA VETURIS, MANAGEMENT ANALYST 714/754-5608

---

### RECOMMENDED ACTIONS:

1. Conduct Second Reading and Adoption of City Ordinance 11-09 Electing to Comply with and Participate in the Voluntary Alternative Redevelopment Program Contained in Division 24, Part 1.9 of the California Health and Safety Code.
2. Approve City Council Resolution Accepting Transmittal of an Initial Recognized Obligation Payment Schedule and Approving an Agreement to Transfer Tax Increment between the City and the Agency pursuant to Part 1.9 of Division 24, California Health and Safety Code.
3. Approve Agency Resolution Adopting the Initial Recognized Obligation Payment Schedule pursuant to Part 1.8 of Division 24 of the California Health and Safety Code and Approving an Agreement to Transfer Tax Increment between the City and the Agency pursuant to Part 1.9, Division 24, California Health and Safety Code.

### DISCUSSION:

At a special meeting on August 26, 2011 and at the regular meeting of September 6, 2011, the City Council and Redevelopment Agency ("Agency") considered and took action on several agenda items relating to Assembly Bills X1 26 and X1 27 ("2011 Redevelopment Legislation"). The agenda items presented in this report are the next and recommended steps pursuant to the 2011 Redevelopment Legislation.

At the special meeting on August 26, 2011, the Agency adopted an Enforceable Obligation Payment Schedule ("EOPS"); on September 6, 2011, the City Council adopted a non-binding Resolution of Intention, conducted first reading of the Ordinance to opt-in to Part 1.9, and made its election to be the successor agency in the event the Agency were to be dissolved. The City has notified the Department of Finance ("DOF"), State Controller's Office ("SCO"), and County Auditor's Office ("CAO") of the adoption of the Resolution of Intention and filed the EOPS with those entities pursuant to Section 34169(g).

Section 34169(h) of Part 1.8 requires all agencies subsequent to the EOPS to prepare an "Initial Recognized Obligation Payment Schedule" ("IROPS") and submit the IROPS to the successor agency. On August 15, 2011, the City took action to designate the City to be the successor agency under Part 1.85 if and when the Supreme Court Stay is lifted and if the Supreme Court's decision were to require the CDA to be dissolved. The City's Finance Director has prepared the Agency's IROPS, which is attached to this agenda report. Staff recommends that the IROPS be approved by the Agency, transmitted to the City, as successor agency, and accepted by the City pursuant to the attached resolutions.

With due acknowledgement to the Supreme Court Stay, many cities/counties and their redevelopment agencies are proceeding with opt-in actions and "backfill" agreements ("Agreement to Transfer Tax Increment", as attached) that include conditional effectiveness provisions due to the stay order. An Agreement to Transfer Tax Increment will establish the City's and Agency's mutual objective for the Agency to pay an amount equivalent to the Remittance (\$1,475,173) to the City pursuant to Part 1.9, Section 34194.2 and to list such obligation on the Statement of Indebtedness to be filed by October 1, 2011. As explained at the prior meetings, while the Remittances are an obligation of the City, not the Agency, pursuant to Section 34194.2 the Agency may transfer a portion of its tax increment to the City in an amount not to exceed the annual Remittance required that year "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals" pursuant to such agreement. For FY 2011-12 only, the Agency transfer to the City may include an amount equal to the Housing Fund annual allocation that would have been deposited as long as the Agency makes a finding that there are insufficient other moneys available, which finding is included in the Agreement to Transfer Tax Increment.

As explained at the September 6<sup>th</sup> meeting, due to the Supreme Court Stay, the Ordinance and the Agreement to Transfer Tax Increment provide each will become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption of the Ordinance, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.

If the Agency does not desire to complete second reading and adoption of the opt-in Ordinance, then subject to the Supreme Court Stay and the court's

decision in the CRA Action that is expected prior to January 15, 2012, pursuant to Parts 1.8 and 1.85, the Agency will be dissolved. Likewise, if the City fails to make any Remittance payment, then the DOF will cause a determination of non-compliance and the Agency will be dissolved. Revenues formerly allocable as tax increment would be distributed to the "successor agency" to pay recognized enforceable obligations and for limited wind down administration; and, all Agency assets would be transferred to the City, as successor agency, for liquidation. Encumbered monies in the Housing Fund and housing assets would be transferred to the Orange County Housing Authority. All remaining (former) tax increment proceeds would be distributed to affected taxing entities; including the existing unencumbered balances sourced from the Housing Fund. The City has elected to be the successor agency in the event the Agency is dissolved. Successor agencies are supervised by "oversight boards" comprised of seven appointed members: Board of Supervisors (2), Mayor (1), County Superintendent of Education (1), Chancellor of California Community Colleges (1), largest special district taxing entity (1), and a former agency employee (appointed by Mayor) (1). The oversight board is empowered to cause early termination of enforceable obligations if determined to be in the best interest of the taxing entities, including arrangements between the agency and another local agency that obligate the agency to fund debt service or to pay for construction or operation of public facilities. AB X1 26 provides that CAO, DOF, and SCO each have additional responsibilities in the dissolution and implementation of enforceable obligations.

#### **FISCAL REVIEW:**

Subject to the outcome of the CRA Action and lifting the Supreme Court Stay, the City will expend \$1,475,173 for the FY 2011-12 Annual Remittance Payment; half due January 15, 2012 and half due May 15, 2012. The Finance Director prepared the attached IROPS based on the filed EOPS. By the Agreement to Transfer Tax Increment, the Agency will provide a backfill payment to the City in an amount equal to the Remittance.

#### **ENVIRONMENTAL IMPACT:**

None.

#### **LEGAL REVIEW:**

Agency special counsel prepared this report, the Ordinance, and Resolutions approving, transmitting and accepting the IROPS, and approving the Agreement to Transfer Tax Increment.

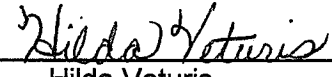
#### **PUBLIC NOTIFICATION:**

Through the regular meeting agenda requirements under the Brown Act.

**CONCLUSION:**

Staff recommends that City Council conduct second reading and adoption of the Ordinance; that the Agency adopt the Resolution approving the IROPS, transmitting it to the City and approve the Agreement to Transfer Tax Increment; and that the City Council adopt the Resolution accepting the IROPS and approve the Agreement to Transfer Tax Increment.

  
Thomas R. Hatch, Executive Director  
Costa Mesa Redevelopment Agency

  
Hilda Veturis  
Management Analyst

  
Bobby Young, Finance Director

Exhibit A – Opt-in Ordinance

Exhibit B – Agency Resolution re IROPS and Agreement to Transfer Tax  
Increment

Exhibit C – City Council Resolution re IROPS and Agreement to Transfer  
Tax Increment

## ORDINANCE NO. 11-09

**AN ORDINANCE OF THE CITY OF COSTA MESA ELECTING TO COMPLY WITH AND PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM CONTAINED IN DIVISION 24, PART 1.9 OF THE CALIFORNIA HEALTH & SAFETY CODE**

**WHEREAS**, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency") is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Costa Mesa ("City"); and

**WHEREAS**, the Agency adopted the Redevelopment Plan for the Costa Mesa Downtown Project ("Project Area") that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94-15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 17, 2003, and Ordinance No. 07-13 on June 19, 2007; and

**WHEREAS**, AB X1 26 and AB X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation"); and

**WHEREAS**, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately; and

**WHEREAS**, Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

**WHEREAS**, Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight committee; and

**WHEREAS**, Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program"); and

**WHEREAS**, the City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation are the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action"); and

**WHEREAS**, on August 11, 2011 the California Supreme Court issued a stay as to Parts 1.85 and 1.9, but not as to Part 1.8, Sections 34161-34167; and

**WHEREAS**, on August 17, 2011 the Supreme Court modified its stay affirming its order that Part 1.85 is stayed, that Part 1.9 is stayed except Section 34194(b)(2) is not stayed, and that Part 1.8, Sections 34161-34169.5, is not stayed, and therefore Sections 34161-34169.5 of Part 1.8 are effective laws; and

**WHEREAS**, the dissolution of the Agency would be detrimental to the health, safety, and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future; and

**WHEREAS**, as a condition of the Agency's continued existence and operation of its community redevelopment agency, the City is required to make certain annual remittances to the County Auditor-Controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012; and

**WHEREAS**, the City will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and expects to have sufficient moneys and revenues to fund the subsequent fiscal years' remittances required by Part 1.9; and

**WHEREAS**, the City's needs are such that it can commit to spend the funds received from the Agency pursuant to the Agreement to Transfer Tax Increment (defined below) ) "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals", including but not limited to payment for the land for and/or installation and/or construction of public improvements, better and more advantageous use of land and a reduction of incompatible land uses in the Project Area, improvement or replacement of obsolete and/or deteriorating commercial and residential structures, improvement of disadvantageous parcelization pattern, improvement of defective or hazardous traffic conditions and infrastructure, improvement of public facilities; and elimination of blight; and

**WHEREAS**, the City and Agency desire to enter into an agreement pursuant to new CRL Section 34194.2, whereby the Agency will make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter to transfer amounts of tax increment equal to each and all subsequent fiscal years' remittances that the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

**WHEREAS**, due to and based on the stay issued by the Supreme Court if, as and when this Ordinance is adopted the City intends that it become effective only upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption hereof, or (ii) upon order of a court of competent jurisdiction and/or upon a determination that the California Supreme Court, or other court of competent jurisdiction, has made a final determination that AB X1 27 are valid and enforceable; and

**WHEREAS**, the City is the lead agency concerning this Ordinance pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines; and

**WHEREAS**, the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(4) because such authorization is not considered a project subject to CEQA review because the City's First Remittance and each subsequent years' remittances are government funding mechanisms and fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant environmental impact; and

**WHEREAS**, while the City currently intends to make the City's First Remittance and all subsequent years' remittances under the Program under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination by the Supreme Court (or other court(s)) that AB 1X 26 and AB 1X 27, all or parts thereof, are constitutional or unconstitutional; and

**WHEREAS**, the City reserves the right, regardless of any community remittance made under the Program pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, in connection with the stay issued by the California Supreme Court in the CRA Action on the effectiveness of the Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make the City's First Remittance and each subsequent years' remittances for the duration of such stay or other court order; and

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred; and

**WHEREAS**, the City has duly considered all other related matters and has determined that the City's participation in the Program is in the best interests of the City, and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:**

**Section 1.** The foregoing Recitals are true and correct and a substantive part of this Ordinance.

**Section 2.** The City hereby finds that (i) the dissolution of the Agency would be detrimental and cause irreparable harm to the community and to the health, safety, and economic well-being of the citizens of the City, and (ii) the types of activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future.

**Section 3.** The City hereby commits to spend those funds received under the Agreement to Transfer Tax Increment or otherwise pursuant to CRL Section 34194.2 "for the purpose of financing activities within the redevelopment area that are related to accomplishing the

redevelopment agency project goals” or as otherwise determined by the courts or subsequent law and in accordance with the laws of the United States and the State of California, all as applicable.

**Section 4.** The City hereby ordains that the City shall comply with the Constitution and the laws of the State of California, including Part 1.9, including the determination of remittance amounts, appeal rights in relation thereto, and the making of the remittances referred to in CRL Section 34194(b) and (c) at the times and in the manner described in Part 1.9. This Ordinance is that ordinance referred to in CRL Section 34193 and shall be interpreted and applied in all respects so as to comply with Part 1.9, to the fullest extent permitted by law.

**Section 5.** On or before November 1, 2011, the City’s Chief Executive Officer is hereby authorized and directed to notify the County Auditor-Controller, the State Controller’s Office, and the State Department of Finance that the City agrees to comply with the provisions of Part 1.9 as provided under Section 34193, such notice to be in accordance with CRL Section 34193.1.

**Section 6.** The City’s remittances to the County Auditor-Controller made pursuant to Part 1.9 may be paid from any legally available funds of the City not otherwise obligated for other uses in accordance with Section 34194.1. Nothing herein is intended or shall be interpreted to require any payments or impose any financial or other obligation of the City other than in accordance with the Constitution and laws of the State of California, including Part 1.9.

**Section 7.** The City Council determines that approval of this Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15378 (b)(4), because such approval is not considered a project subject to CEQA review; the commitment to make the remittance payments is a government funding mechanism and fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant environmental impact.

**Section 8.** The City Council hereby authorizes and directs that a Notice of Exemption shall be filed with the Clerk of the Board of Supervisors of the County of Orange, California, within five (5) working days following the date of adoption of this Ordinance.

**Section 9.** The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk’s office located at 77 Fair Drive, Costa Mesa California 92628. The custodian for these records is the City Clerk.

**Section 10.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**Section 11.** This Ordinance shall become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption hereof, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.



**Section 12.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

**PASSED APPROVED AND ADOPTED** this \_\_\_\_<sup>th</sup> day of September 2011.

**CITY OF COSTA MESA,**  
a California municipal corporation

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     )  
CITY OF COSTA MESA     )

I, \_\_\_\_\_, City Clerk of the City of Costa Mesa, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was introduced at a regular meeting of the City Council of the City of Costa Mesa, held on the 6<sup>th</sup> day of September 2011, and that the same was duly passed and adopted at a regular meeting of said City Council held on the 20<sup>th</sup> day of September 2011.

AYES:                   COUNCIL MEMBERS:

NOES:                   COUNCIL MEMBERS:

ABSENT:                COUNCIL MEMBERS:

ABSTAIN:               COUNCIL MEMBERS:

**CITY OF COSTA MESA**, a California municipal  
corporation

\_\_\_\_\_  
City Clerk

## RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE COSTA MESA REDEVELOPMENT AGENCY, CITY OF COSTA MESA, CALIFORNIA ADOPTING AN INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE, TRANSMITTING SUCH SCHEDULE TO THE CITY, AS SUCCESSOR AGENCY, APPROVING AN AGREEMENT TO TRANSFER TAX INCREMENT BETWEEN THE AGENCY AND THE CITY OF COSTA MESA, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.* ("CRL")) and is responsible for the administration of redevelopment activities within the City of Costa Mesa; and

**WHEREAS**, the City adopted the Redevelopment Plan ("Redevelopment Plan") for the Costa Mesa Downtown Project ("Project Area") that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94 15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 7, 2003, and Ordinance No. 07-13 on June 19, 2007; and

**WHEREAS**, the City and Agency are responsible for implementation of the Redevelopment Plan for the Project Area, and the Redevelopment Plan sets forth a plan for redevelopment of the Project Area consistent with the policies and standards of the General Plan of the City; and

**WHEREAS**, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

**WHEREAS**, continued redevelopment of the Project Area to eliminate blight, improve public facilities and infrastructure, provide affordable housing, and enter into public and private partnerships to improve the community, create jobs, and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, AB X1 26 and AB X1 27 are trailer bills to the 2011-12 budget bills and were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation"); and

**WHEREAS**, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purported to become effective immediately; and

**WHEREAS**, Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

**WHEREAS**, Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight committee; and

**WHEREAS**, Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program"); and

**WHEREAS**, the City is aware that the 2011 Redevelopment Legislation is the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action"); and

**WHEREAS**, the Supreme Court accepted original jurisdiction of the CRA Action on August 11, 2011, notified the parties of the briefing schedule, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8, then on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and on Section 34194(b)(2) of Part 1.9, making those laws now effective ("Supreme Court Stay"); and

**WHEREAS**, Section 34169(h) of the CRL, which was added to the CRL by AB X1 26 and is set forth in Part 1.8 of the CRL, requires the Agency to prepare an Initial Recognized Obligation Payment Schedule, no later than September 30, 2011, and provide it to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170); and

**WHEREAS**, while Part 1.85 (which provides for the dissolution of redevelopment agencies and the creation of successor agencies) and Part 1.9, except Section 34194(b)(2), (which authorizes the City to opt into the Program) are both stayed by order of the California Supreme Court, Part 1.8, specifically including Section 34169, of the CRL, currently remains in full force and effect; and

**WHEREAS**, on September 6, 2011 the City by resolution confirmed its election to become the successor agency in the event the Agency is dissolved and adopted and thereafter caused to be transmitted to the State and County its Enforceable Obligation Payment Schedule; and

**WHEREAS**, the Agency desires to adopt the Initial Recognized Obligation Payment Schedule attached to this Resolution as Attachment No. 1 and incorporated herein ("IROPS") and to transmit the IROPS to the City, as successor agency, pursuant to Section 34169(h) of the CRL; and

**WHEREAS**, each city and county electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, is required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with a larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012; and

**WHEREAS**, the City expects it will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and further expects to have sufficient moneys and revenues to fund the subsequent annual remittances required by Part 1.9; and

**WHEREAS**, the City is opting into Part 1.9 in order to allow the Agency to continue in operation and perform its functions; and

**WHEREAS**, subject to the Supreme Court Stay, the City and Agency desire to enter into an agreement pursuant to CRL Section 34194.2 whereby the Agency shall make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter transfer amounts of tax increment equal to any subsequent remittance which the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

**WHEREAS**, the Agency, by the adoption of this Resolution, does not represent, disclaim, or take any position whatsoever on the issue of the validity of AB X1 26 or AB X1 27, but rather the Agency seeks to comply with the Constitution and laws of the State of California, in order to preserve the ability of the Agency to continue to operate and thereby benefit the community; and

**WHEREAS**, the Agency has duly considered all other related matters and has determined that the Agency's adoption of the IROPS, submission of the IROPS to the City, and approval and execution of the Agreement to Transfer Tax Increment are in the best interests of the City and the Agency and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED BY THE COSTA MESA REDEVELOPMENT AGENCY:**

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. The Agency hereby approves the IROPS attached hereto as Attachment No. 1 and incorporated herein and authorizes the Executive Director to transmit the IROPS to the City (CEO, City Clerk, and Finance Director), as successor agency, in the event the Agency is dissolved and to the extent authorized and/or required by law, including Part 1.85.

Section 3. The Agency hereby approves that certain Agreement to Transfer Tax Increment in substantially the form attached hereto as Attachment No. 2 and incorporated herein, with such changes mutually agreed upon by the Executive Director, the CEO, the Agency's Counsel and the City Attorney, respectively, as are minor and in substantial conformance with the form of the Agreement to Transfer Tax Increment submitted herewith. The Chairman and Secretary are hereby authorized to execute and attest the Agreement to Transfer Tax Increment on behalf of Agency. In such regard, the Chairman is authorized to sign the final version of the Agreement to Transfer Tax Increment after completion of any such non-substantive, minor revisions completed by the Executive Director, CEO, City Attorney and Special Counsel. Copies of the final form of the Agreement to Transfer Tax Increment, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the Executive Director (or his duly authorized representative) is authorized to implement the Agreement to Transfer Tax Increment and take all further actions and execute all documents referenced therein and/or necessary and appropriate to implement the purposes of the Agreement to Transfer Tax Increment. The Executive Director (or his duly authorized representative) is hereby authorized to the extent necessary during the implementation of the Agreement to Transfer Tax Increment to make technical or minor changes, modifications, amendments and interpretations thereto after execution, as necessary to properly implement and carry

out the Agreement to Transfer Tax Increment; provided any and all such changes shall not in any manner materially affect the rights and obligations of the Agency thereunder.

Section 4. For fiscal year 2011-12 pursuant to CRL Section 34194.3, the Agency shall be exempt from making the full allocation required to be made to the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3 and 33334.6. The Agency hereby finds and determines based upon substantial evidence provided in the record before it including the reports and information that were presented in connection with and made a part of the Agency's and City's and prior other actions pursuant to the 2011 Redevelopment Legislation, that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, or its obligations under Section 34194.2 and the Agreement to Transfer Tax Increment.

Section 6. This Resolution shall in no way be construed as requiring the Agency (or the City) to abide by the 2011 Redevelopment Legislation in the event either, or both, bills are found unconstitutional or otherwise legally invalid in whole or in part, nor shall this Resolution effect or give rise to any waiver of rights or remedies the Agency (and/or the City) may have, whether in law or in equity, to challenge 2011 Redevelopment Legislation. This Resolution shall not be construed as the Agency's (and/or the City's) willing acceptance of, or concurrence with the 2011 Redevelopment Legislation, either AB 1X 26 or AB 1X 27; nor does this Resolution evidence any assertion or belief whatsoever on the part of the Agency (and/or City) the 2011 Redevelopment Legislation is constitutional or lawful.

Section 7. This Resolution shall be effective immediately upon adoption.

Section 8. The Agency Secretary shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September 2011.

---

Chairman

(SEAL)

ATTEST:

---

Agency Secretary

STATE OF CALIFORNIA                    )  
COUNTY OF ORANGE                    ) ss.  
CITY OF COSTA MESA                    )

I, \_\_\_\_\_, Secretary of the Costa Mesa Redevelopment Agency, City of Costa Mesa, California hereby certify that the foregoing resolution was duly adopted by the Agency Board at its regular meeting held on the 20<sup>th</sup> day of September, 2011, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

---

Secretary

(SEAL)





**ATTACHMENT NO. 1**  
**INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE**

**[Attached on following pages.]**



## INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34169 (h)

Project Name / Debt Obligation	Payee	Description	Total Due During Fiscal Year	Payments by period		Total
				10/1/11 to 12/31/11	1/1/12 to 6/30/12	
1) Agreement to Transfer Tax Increment	City of Costa Mesa	Agreement to reimburse Opt in payment	1,475,173.00		1,475,173.00	\$ 1,475,173.00
2) TAB Refunding 2003	Bank of New York	Bonds issued for non-housing projects	690,362.50	612,275.00	78,087.50	\$ 690,362.50
3) Contract for consulting services	Bank of New York	Fiscal Agent Services	3,000.00		3,000.00	\$ 3,000.00
4) Employee Costs	Employees of CM RDA	Payroll for employees	670,323.00	167,583.00	335,166.00	\$ 502,749.00
5) County Property Tax Admin Fee	County of Orange	Charge for Administering property tax system	40,000.00	20,000.00	20,000.00	\$ 40,000.00
6) Contract for consulting services	Mayer, Hoffman, McCann	Annual Audit Services	11,000.00		11,000.00	\$ 11,000.00
7) Promissory Note Payable	City of Costa Mesa	Original Loan to establish RDA	1,299,705.00	1,299,705.00		\$ 1,299,705.00
8) Rental Revenue Agreement	City of Costa Mesa-CDBG	Reimbursement of rental revenue from CDBG housing proj	123,669.00		123,669.00	\$ 123,669.00
9) Loan from CDBG Fund	City of Costa Mesa-CDBG	Loan from CDBG for housing project	10,204.00		10,204.00	\$ 10,204.00
10) 1901 Newport Housing Project	Fairfield Residential	Assistance for low-mid housing project	892,500.00		892,500.00	\$ 892,500.00
11) Davis Field Lighting Project	Dream Engineering	Design work on Davis Field Project	7,185.00	7,185.00		\$ 7,185.00
12) Davis Field Lighting Project	Musco Sports Lighting, LLC	Lighting equipment and structures for proj	156,971.00		156,971.00	\$ 156,971.00
13) Davis Field Lighting Project	R&M Electrical Contracting	Electrical work to install lighting	321,631.00		321,631.00	\$ 321,631.00
14) Harper's Pointe Housing Project	Harper's Pointe LP	Loan for Affordable Housing Project	990,000.00			\$ -
15) Contract for attorney services	Stradling, Yocca, Carlson & Raulth	Contract Attorney services for RDA	75,000.00	20,000.00	35,000.00	\$ 55,000.00
16) Contract for consulting services	Keyser Marston	Affordable housing legal review services	57,000.00		57,000.00	\$ 57,000.00
17) Contract for consulting services	Barr & Clark Environmental	Environmental review services	15,000.00		15,000.00	\$ 15,000.00
18) Contract for monitoring	Keyser Marston	Monitoring and enforcing existing covenants and obligations	10,000.00		10,000.00	\$ 10,000.00
19)						\$ -
20)						\$ -
21)						\$ -
22)						\$ -
23)						\$ -
24)						\$ -
25)						\$ -
26)						\$ -
27)						\$ -
28)						\$ -
29)						\$ -
30)						\$ -
Totals - This Page			\$ 6,848,723.50	\$ 2,126,748.00	\$ 3,544,401.50	\$ 5,671,149.50
Totals - Page 2			\$ -	\$ -	\$ -	\$ -
Totals - Page 3			\$ -	\$ -	\$ -	\$ -
Totals - Page 4			\$ -	\$ -	\$ -	\$ -
Totals - Other Obligations			\$ -	\$ -	\$ -	\$ -
Grand total - All Pages			\$ 6,848,723.50	\$ 2,126,748.00	\$ 3,544,401.50	\$ 5,671,149.50

\* This Enforceable Obligation Payment Schedule (EOPS) is to be adopted by the redevelopment agency no later than late August. It is the basis for the Preliminary Draft Recognized Obligation Payment Schedule (ROPS), which must be prepared by the dissolving Agency by 9/30/11. (The draft ROPS must be prepared by the Successor Agency by 11/30/11.)



**ATTACHMENT NO. 2**  
**AGREEMENT TO TRANSFER TAX INCREMENT**  
**[Attached on following pages.]**



## AGREEMENT TO TRANSFER TAX INCREMENT

This **AGREEMENT TO TRANSFER TAX INCREMENT** ("Agreement") is entered into as of \_\_\_\_\_, 2011 ("Date of Agreement"), by and between the **CITY OF COSTA MESA**, a California municipal corporation ("City") and the **COSTA MESA REDEVELOPMENT AGENCY, CITY OF COSTA MESA, CALIFORNIA**, a public body, corporate and politic ("Agency").

### RECITALS

A. The Agency is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Costa Mesa.

B. The Agency receives and has available to it tax increment revenues in accordance with and pursuant to CRL Section 33670(b) and Article XVI Section 16 of the California Constitution ("Tax Increment").

C. Assembly Bills X1 26 and X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation").

D. Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately.

E. Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8.

F. Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight committee.

G. Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program").

H. The City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation are the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action").

I. On August 11, 2011 the California Supreme Court issued a stay as to Parts 1.85 and 1.9, but not as to Part 1.8, Sections 34161-34167.

J. On August 17, 2011 the Supreme Court modified its stay affirming its order that Part 1.85 is stayed, that Part 1.9 is stayed except Section 34194(b)(2) is not stayed, and that Part 1.8, Sections 34161-34169.5, is not stayed, and therefore Sections 34161-34169.5 of Part 1.8 are effective laws.

K. Those cities or counties electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, are required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with an larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012.

L. The City will have sufficient funds and revenues to fund an amount equal to the City's payment of the First Remittance and expects to have funds and revenues sufficient to fund amounts equal to the subsequent fiscal years' remittances required by Part 1.9.

M. The City and Agency desire to enter into this Agreement pursuant to CRL Section 34194.2 whereby the Agency shall transfer portions of Tax Increment to the City in an amount equal to the First Remittance, and thereafter to transfer amounts of Tax Increment equal to each and all subsequent fiscal years' remittances that the City is required to make to the CAC pursuant to the City's participation in the Program.

## **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

**Section 1.** The Agency shall be liable to City for the payment of the Program Remittances in connection with the City's participation in the Program. The Agency agrees that no later than fifteen (15) days prior to the date upon which the City shall be statutorily required to make any full or partial payment of a Program Remittance in any fiscal year, the Agency shall transfer funds to the City in an amount equal to such payment; each such payment by the Agency shall be referred to herein as a "Required Agency Payment" and, as such payments are combined, "Required Agency Payments." Interest shall accrue on any unpaid balance of the Required Agency Payments at an annual interest rate equal to the maximum rate permitted by Section 53531 of the Government Code. Interest on amounts paid as Required Agency Payments shall be deemed to begin accruing on the date upon which the City makes any required Program Remittance to the County Auditor-Controller.

**Section 2.** The Agency pledges Tax Increment revenues available to the Agency under Section 33670(b) of the California Health & Safety Code toward repayment of its indebtedness to the City hereunder; provided that such pledge is junior and subordinate to all outstanding bonds of the Agency (including without limitation the Agency's obligations under the following: 2003 Tax Allocation Refunding Bonds, and all refundings thereof), any refunding bonds issued by or through the Agency, and any additional bonds issued hereafter by or through the Agency. The City and Agency agree that such obligation by Agency to City may be further subordinated by agreement of the City and the Agency.

(a) As used in this Section 2, "Tax Increment" means all taxes annually allocated to the Agency with respect to the Project Areas in each year following the Date of Agreement, pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the CRL and Section 16 of Article XVI



of the Constitution of the State of California and as provided in the Redevelopment Plans for the Project Areas, including all payments, subventions and reimbursements (if any) to the Agency specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations; but excluding (i) all amounts of such taxes required to be deposited into the Low and Moderate Income Housing Fund of the Agency in any Fiscal Year pursuant to Sections 33334.2 or 33334.6 of the CRL, (ii) all amounts of such taxes required to be paid to taxing entities under Sections 33607.5 and 33607.7 of the CRL to the extent such required payments create a prior lien on such taxes, (iii) amounts, if any, payable by the State of California to the Agency under and pursuant to the provisions of Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the Government Code of the State of California, (iv) amounts retained by the County of Orange as costs of collection pursuant to Chapter 466, Statutes of 1990, and (v) such taxes, to the extent subject to a prior express pledge by the Agency.

**Section 3.** Pursuant to Sections 34194.2 and 34194.3 and for FY 2011-12 only, the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, and/or its obligations under Section 34194.2 therefore the Agency is exempted from making the annual deposit to the Housing Fund and an amount equal thereto shall be part of the tax increment transfer hereunder. The Agency's debts and obligations are set forth and summarized in the EOPS, the Statement of Indebtedness, and reports and information presented to the City and Agency in actions relating to the 2011 Redevelopment Legislation.

**Section 4.** The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670, *et seq.* of the Community Redevelopment Law.

**Section 5.** The City agrees to spend those funds received under the Agreement to Transfer Tax Increment or otherwise pursuant to CRL Section 34194.2 "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals" or as otherwise determined by the courts or subsequent law and in accordance with the laws of the United States and the State of California, all as applicable.

**Section 6.** This Agreement shall become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption of the Ordinance to opt-in under Part 1.9, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 (including Sections 34194.2 and 34194.3) are valid and enforceable.

**Section 7.** If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. The City Council and Agency hereby declare that it would have approved this Agreement irrespective of the invalidity of any particular portion hereof so long as and subject to Part 1.9 being declared valid and enforceable.

**Section 8.** An event of default occurs under this Agreement when: (a) there is a breach of any condition, covenant or promise set forth herein; (b) written notice thereof has been given to the defaulting party; and (c) such breach has not been cured within thirty (30) days after such notice was given to the defaulting party or, if such breach cannot reasonably be cured within such thirty (30) day period, the defaulting party fails to commence to cure the breach and/or fails thereafter to diligently proceed to complete such cure. A waiver, if any, by a party must be in writing; and, such waiver by a

party of a breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

**Section 9.** The occurrence of an event of default hereunder shall give the non-defaulting party the right to proceed with any and all remedies available at law or equity, including without limitation an action for damages, an action or proceeding for specific performance, and/or an action or proceeding for injunctive relief.

**Section 10.** City shall maintain authority of this Agreement and the authority to implement this Agreement through City Manager and Finance Director (or duly authorized representative(s)) and Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Executive Director and Treasurer (or duly authorized representative(s)); each shall have the authority to make approvals, issue interpretations, waive provisions hereof.

**Section 11.** This Agreement shall be binding upon City and Agency and their successors and assigns. Whenever the terms "City" or "Agency" are used in this Agreement, such terms shall include any other successors and assigns as herein provided.

**Section 12.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 13.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 14.** Any amendment, alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each party. Each party agrees to consider in good faith and exercise reasonable discretion in its consideration of a request by another party to amend this Agreement.

**[signature blocks on next page]**

IN WITNESS WHEREOF, the parties have executed this Agreement to Transfer Tax Increment as of the date first above written.

**CITY:**

**CITY OF COSTA MESA**  
a California municipal corporation

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**AGENCY:**

**COSTA MESA REDEVELOPMENT AGENCY,**  
**CITY OF COSTA MESA, CALIFORNIA,** a public  
body, corporate and politic

By: \_\_\_\_\_  
Chairperson

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**  
**STRADLING YOCCA CARLSON & RAUTH**

\_\_\_\_\_  
Agency Special Counsel



## RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA ACCEPTING TRANSMITTAL OF THE AGENCY'S INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE; APPROVING AN AGREEMENT TO TRANSFER TAX INCREMENT BETWEEN THE CITY AND THE AGENCY; AND, MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.* ("CRL")) and is responsible for the administration of redevelopment activities within the City of Costa Mesa; and

**WHEREAS**, the City adopted the Redevelopment Plan ("Redevelopment Plan") for the Costa Mesa Downtown Project ("Project Area") that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94 15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 7, 2003, and Ordinance No. 07-13 on June 19, 2007; and

**WHEREAS**, the City and Agency are responsible for implementation of the Redevelopment Plan for the Project Area, and the Redevelopment Plan sets forth a plan for redevelopment of the Project Area consistent with the policies and standards of the General Plan of the City; and

**WHEREAS**, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

**WHEREAS**, continued redevelopment of the Project Area to eliminate blight, improve public facilities and infrastructure, provide affordable housing, and enter into public and private partnerships to improve the community, create jobs, and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, AB X1 26 and AB X1 27 are trailer bills to the 2011-12 budget bills and were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation"); and

**WHEREAS**, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purported to become effective immediately; and

**WHEREAS**, Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

**WHEREAS**, Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight committee; and

**WHEREAS**, Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program"); and

**WHEREAS**, the City is aware that the 2011 Redevelopment Legislation is the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action"); and

**WHEREAS**, the Supreme Court accepted original jurisdiction of the CRA Action on August 11, 2011, notified the parties of the briefing schedule, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8, then on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and on Section 34194(b)(2) of Part 1.9, making those laws now effective ("Supreme Court Stay"); and

**WHEREAS**, Section 34169(h) of the CRL, which was added to the CRL by AB 1X 26 and is set forth in Part 1.8 of the CRL, requires the Agency to prepare an Initial Recognized Obligation Payment Schedule, no later than September 30, 2011, and provide it to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170); and

**WHEREAS**, while Part 1.85 (which provides for the dissolution of redevelopment agencies and the creation of successor agencies) and Part 1.9 (which authorizes the City to opt into the Program) are both stayed by order of the California Supreme Court, Part 1.8, specifically including Section 34169, of the CRL, currently remains in full force and effect; and

**WHEREAS**, the City has made an election to become the successor agency in the event the Agency is dissolved; and

**WHEREAS**, the Agency by resolution has adopted an Initial Recognized Obligation Payment Schedule ("IROPs") and has directed the Executive Director to transmit the IROPs to the City, as required by Section 34169(h) of the CRL; and

**WHEREAS**, the City desires to accept the transmittal of the IROPs; and

**WHEREAS**, each city and county electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, is required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with a larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012; and

**WHEREAS**, the City expects it will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and further expects to have sufficient moneys and revenues to fund the subsequent annual remittances required by Part 1.9; and

**WHEREAS**, the City is opting into Part 1.9 in order to allow the Agency to continue in operation and perform its functions; and

**WHEREAS**, the City and Agency desire to enter into an agreement pursuant to CRL Section 34194.2 whereby the Agency shall make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter transfer amounts of tax increment equal to any subsequent remittance which the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

**WHEREAS**, the City, by the adoption of this Resolution, does not represent, disclaim, or take any position whatsoever on the issue of the validity of AB X1 26 or AB X1 27, but rather the City seeks to comply with the Constitution and laws of the State of California, in order to preserve the ability of the Agency to continue to operate and thereby benefit the community; and

**WHEREAS**, the dissolution of the Agency would be detrimental to the health, safety, and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future; and

**WHEREAS**, the City has duly considered all other related matters and has determined that the City's acceptance of the IROPS and the approval and execution of the Agreement to Transfer Tax Increment is in the best interests of the City and the Agency and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA:**

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. The City Council hereby accepts transmittal by the Agency of the IROPS on behalf of the City, as successor agency, pursuant to Section 34169(h) of the CRL.

Section 3. The City Council hereby approves that certain Agreement to Transfer Tax Increment in substantially the form attached hereto as Attachment No. 1 and incorporated herein, with such changes mutually agreed upon by the CEO, the Executive Director, the City Attorney, and Special Counsel, respectively, as are minor and in substantial conformance with the form of the Agreement to Transfer Tax Increment submitted herewith. The Mayor and the City Clerk are hereby authorized to execute and attest the Agreement to Transfer Tax Increment on behalf of the City. In such regard, the Mayor is authorized to sign the final version of the Agreement to Transfer Tax Increment after completion of any such non-substantive, minor revisions completed by the Executive Director, CEO, City Attorney and Special Counsel. Copies of the final form of the Agreement to Transfer Tax Increment, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the CEO (or his duly authorized representative) is authorized to implement the Agreement to Transfer Tax Increment and take all further actions and execute all documents referenced therein and/or necessary and appropriate to implement the purposes of the Agreement to Transfer Tax Increment. The CEO (or his duly authorized representative) is hereby authorized to the

extent necessary during the implementation of the Agreement to Transfer Tax Increment to make technical or minor changes, modifications, amendments and interpretations thereto after execution, as necessary to properly implement and carry out the Agreement to Transfer Tax Increment; provided any and all such changes shall not in any manner materially affect the rights and obligations of the City thereunder.

Section 4. This Resolution shall in no way be construed as requiring the City (or the Agency) to abide by the 2011 Redevelopment Legislation in the event either, or both, bills are found unconstitutional or otherwise legally invalid in whole or in part, nor shall this Resolution effect or give rise to any waiver of rights or remedies the City (and/or the Agency) may have, whether in law or in equity, to challenge 2011 Redevelopment Legislation. This Resolution shall not be construed as the City's (and/or the Agency's) willing acceptance of, or concurrence with the 2011 Redevelopment Legislation, either AB X1 26 or AB X1 27; nor does this Resolution evidence any assertion or belief whatsoever on the part of the City (and/or Agency) the 2011 Redevelopment Legislation is constitutional or lawful.

Section 5. This Resolution shall be effective immediately upon adoption.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September 2011.

---

Mayor

(SEAL)

ATTEST:

---

City Clerk



STATE OF CALIFORNIA                    )  
COUNTY OF ORANGE                    ) ss.  
CITY OF COSTA MESA                    )

I, \_\_\_\_\_, City Clerk of the City of Costa Mesa, hereby certify that the foregoing resolution was duly adopted by the City Council of said City at its regular meeting held on the 20<sup>th</sup> day of September 2011, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

---

City Clerk

(SEAL)



**ATTACHMENT NO. 1**  
**AGREEMENT TO TRANSFER TAX INCREMENT**

**[Attached]**



## AGREEMENT TO TRANSFER TAX INCREMENT

This **AGREEMENT TO TRANSFER TAX INCREMENT** ("Agreement") is entered into as of \_\_\_\_\_, 2011 ("Date of Agreement"), by and between the **CITY OF COSTA MESA**, a California municipal corporation ("City") and the **COSTA MESA REDEVELOPMENT AGENCY, CITY OF COSTA MESA, CALIFORNIA**, a public body, corporate and politic ("Agency").

### RECITALS

A. The Agency is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Costa Mesa.

B. The Agency receives and has available to it tax increment revenues in accordance with and pursuant to CRL Section 33670(b) and Article XVI Section 16 of the California Constitution ("Tax Increment").

C. Assembly Bills X1 26 and X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation").

D. Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately.

E. Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8.

F. Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight committee.

G. Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program").

H. The City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation are the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action").

I. On August 11, 2011 the California Supreme Court issued a stay as to Parts 1.85 and 1.9, but not as to Part 1.8, Sections 34161-34167.

J. On August 17, 2011 the Supreme Court modified its stay affirming its order that Part 1.85 is stayed, that Part 1.9 is stayed except Section 34194(b)(2) is not stayed, and that Part 1.8, Sections 34161-34169.5, is not stayed, and therefore Sections 34161-34169.5 of Part 1.8 are effective laws.

K. Those cities or counties electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, are required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with an larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012.

L. The City will have sufficient funds and revenues to fund an amount equal to the City's payment of the First Remittance and expects to have funds and revenues sufficient to fund amounts equal to the subsequent fiscal years' remittances required by Part 1.9.

M. The City and Agency desire to enter into this Agreement pursuant to CRL Section 34194.2 whereby the Agency shall transfer portions of Tax Increment to the City in an amount equal to the First Remittance, and thereafter to transfer amounts of Tax Increment equal to each and all subsequent fiscal years' remittances that the City is required to make to the CAC pursuant to the City's participation in the Program.

## **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

**Section 1.** The Agency shall be liable to City for the payment of the Program Remittances in connection with the City's participation in the Program. The Agency agrees that no later than fifteen (15) days prior to the date upon which the City shall be statutorily required to make any full or partial payment of a Program Remittance in any fiscal year, the Agency shall transfer funds to the City in an amount equal to such payment; each such payment by the Agency shall be referred to herein as a "Required Agency Payment" and, as such payments are combined, "Required Agency Payments." Interest shall accrue on any unpaid balance of the Required Agency Payments at an annual interest rate equal to the maximum rate permitted by Section 53531 of the Government Code. Interest on amounts paid as Required Agency Payments shall be deemed to begin accruing on the date upon which the City makes any required Program Remittance to the County Auditor-Controller.

**Section 2.** The Agency pledges Tax Increment revenues available to the Agency under Section 33670(b) of the California Health & Safety Code toward repayment of its indebtedness to the City hereunder; provided that such pledge is junior and subordinate to all outstanding bonds of the Agency (including without limitation the Agency's obligations under the following: 2003 Tax Allocation Refunding Bonds, and all refundings thereof), any refunding bonds issued by or through the Agency, and any additional bonds issued hereafter by or through the Agency. The City and Agency agree that such obligation by Agency to City may be further subordinated by agreement of the City and the Agency.

(a) As used in this Section 2, "Tax Increment" means all taxes annually allocated to the Agency with respect to the Project Areas in each year following the Date of Agreement, pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the CRL and Section 16 of Article XVI

of the Constitution of the State of California and as provided in the Redevelopment Plans for the Project Areas, including all payments, subventions and reimbursements (if any) to the Agency specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations; but excluding (i) all amounts of such taxes required to be deposited into the Low and Moderate Income Housing Fund of the Agency in any Fiscal Year pursuant to Sections 33334.2 or 33334.6 of the CRL, (ii) all amounts of such taxes required to be paid to taxing entities under Sections 33607.5 and 33607.7 of the CRL to the extent such required payments create a prior lien on such taxes, (iii) amounts, if any, payable by the State of California to the Agency under and pursuant to the provisions of Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the Government Code of the State of California, (iv) amounts retained by the County of Orange as costs of collection pursuant to Chapter 466, Statutes of 1990, and (v) such taxes, to the extent subject to a prior express pledge by the Agency.

**Section 3.** Pursuant to Sections 34194.2 and 34194.3 and for FY 2011-12 only, the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, and/or its obligations under Section 34194.2 therefore the Agency is exempted from making the annual deposit to the Housing Fund and an amount equal thereto shall be part of the tax increment transfer hereunder. The Agency's debts and obligations are set forth and summarized in the EOPS, the Statement of Indebtedness, and reports and information presented to the City and Agency in actions relating to the 2011 Redevelopment Legislation.

**Section 4.** The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670, *et seq.* of the Community Redevelopment Law.

**Section 5.** The City agrees to spend those funds received under the Agreement to Transfer Tax Increment or otherwise pursuant to CRL Section 34194.2 "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals" or as otherwise determined by the courts or subsequent law and in accordance with the laws of the United States and the State of California, all as applicable.

**Section 6.** This Agreement shall become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption of the Ordinance to opt-in under Part 1.9, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 (including Sections 34194.2 and 34194.3) are valid and enforceable.

**Section 7.** If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. The City Council and Agency hereby declare that it would have approved this Agreement irrespective of the invalidity of any particular portion hereof so long as and subject to Part 1.9 being declared valid and enforceable.

**Section 8.** An event of default occurs under this Agreement when: (a) there is a breach of any condition, covenant or promise set forth herein; (b) written notice thereof has been given to the defaulting party; and (c) such breach has not been cured within thirty (30) days after such notice was given to the defaulting party or, if such breach cannot reasonably be cured within such thirty (30) day period, the defaulting party fails to commence to cure the breach and/or fails thereafter to diligently proceed to complete such cure. A waiver, if any, by a party must be in writing; and, such waiver by a

party of a breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

**Section 9.** The occurrence of an event of default hereunder shall give the non-defaulting party the right to proceed with any and all remedies available at law or equity, including without limitation an action for damages, an action or proceeding for specific performance, and/or an action or proceeding for injunctive relief.

**Section 10.** City shall maintain authority of this Agreement and the authority to implement this Agreement through City Manager and Finance Director (or duly authorized representative(s)) and Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Executive Director and Treasurer (or duly authorized representative(s)); each shall have the authority to make approvals, issue interpretations, waive provisions hereof.

**Section 11.** This Agreement shall be binding upon City and Agency and their successors and assigns. Whenever the terms "City" or "Agency" are used in this Agreement, such terms shall include any other successors and assigns as herein provided.

**Section 12.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 13.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 14.** Any amendment, alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each party. Each party agrees to consider in good faith and exercise reasonable discretion in its consideration of a request by another party to amend this Agreement.

**[signature blocks on next page]**



IN WITNESS WHEREOF, the parties have executed this Agreement to Transfer Tax Increment as of the date first above written.

**CITY:**

**CITY OF COSTA MESA**  
a California municipal corporation

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**AGENCY:**

**COSTA MESA REDEVELOPMENT AGENCY,**  
**CITY OF COSTA MESA, CALIFORNIA,** a public  
body, corporate and politic

By: \_\_\_\_\_  
Chairperson

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**  
**STRADLING YOCCA CARLSON & RAUTH**

\_\_\_\_\_  
Agency Special Counsel

